

**MIDWIFE CERTIFICATION ACT**

2004 GENERAL SESSION

STATE OF UTAH

**Sponsor: Jackie Biskupski**

Eric K. Hutchings

Don E. Bush

Ty McCartney

David Litvack

J. Morgan Philpot

Glenn A. Donnelson

Peggy Wallace

Mike Thompson

---

**LONG TITLE**

**General Description:**

This bill modifies the Occupations and Professions Code by enacting the Midwife Certification Act and makes related changes to the Health Care Providers Immunity from Liability Act.

**Highlighted Provisions:**

This bill:

- ▶ provides for certification of Direct-entry midwives by the Division of Occupational and Professional Licensing;
- ▶ provides for definitions relating to the practice of midwives;
- ▶ creates the Certified Direct-entry Midwife Board and sets forth its membership and duties;
- ▶ requires the division to establish a Certified Direct-entry Midwife Formulary Committee and a certified Direct-entry midwife formulary to define which prescription drugs and devices can be **H** [prescribed] **OBTAINED** **h** and administered by certified Direct-entry midwives and to provide guidelines for their use;
- ▶ provides for disciplinary action, including administrative penalties, against certified Direct-entry midwives;
- ▶ defines and provides penalties for unlawful and unprofessional conduct;
- ▶ sets standards for consultation, collaboration, referral, and transfer to or with other



29 health care providers and sets standards for liability under those circumstances; and

30       ▶ brings certified Direct-entry midwives within the scope of the Health Care

31 Providers Immunity From Liability Act.

32 **Monies Appropriated in this Bill:**

33       None

34 **Other Special Clauses:**

35       None

36 **Utah Code Sections Affected:**

37 AMENDS:

38       **58-13-2**, as last amended by Chapter 3, Laws of Utah 2003

39       **58-13-3**, as last amended by Chapter 207, Laws of Utah 2003

40       **78-14-3**, as last amended by Chapter 131, Laws of Utah 2002

41 ENACTS:

42       **58-77-101**, Utah Code Annotated 1953

43       **58-77-102**, Utah Code Annotated 1953

44       **58-77-201**, Utah Code Annotated 1953

45       **58-77-202**, Utah Code Annotated 1953

46       **58-77-301**, Utah Code Annotated 1953

47       **58-77-302**, Utah Code Annotated 1953

48       **58-77-303**, Utah Code Annotated 1953

49       **58-77-304**, Utah Code Annotated 1953

50       **58-77-401**, Utah Code Annotated 1953

51       **58-77-501**, Utah Code Annotated 1953

52       **58-77-502**, Utah Code Annotated 1953

53       **58-77-503**, Utah Code Annotated 1953

54       **58-77-601**, Utah Code Annotated 1953

55       **58-77-602**, Utah Code Annotated 1953

56       **58-77-603**, Utah Code Annotated 1953



58 *Be it enacted by the Legislature of the state of Utah:*

59       Section 1. Section **58-13-2** is amended to read:

60           **58-13-2. Emergency care rendered by licensee.**

61           (1) A person licensed or certified under Title 58, Occupations and Professions, to  
62 practice as any of the following health care professionals, who is under no legal duty to  
63 respond, and who in good faith renders emergency care at the scene of an emergency  
64 gratuitously and in good faith, is not liable for any civil damages as a result of any acts or  
65 omissions by the person in rendering the emergency care:

- 66           (a) osteopathic physician;
- 67           (b) physician and surgeon;
- 68           (c) naturopathic physician;
- 69           (d) dentist or dental hygienist;
- 70           (e) chiropractic physician;
- 71           (f) physician assistant;
- 72           (g) optometrist;
- 73           (h) nurse licensed under Section 58-31b-301 or 58-31c-102;
- 74           (i) podiatrist;
- 75           (j) certified nurse midwife;
- 76           (k) respiratory therapist; [or]
- 77           (l) pharmacist, pharmacy technician, and pharmacy intern[-]; or
- 78           (m) Direct-entry midwife certified under Section 58-77-301.

79           (2) (a) This Subsection (2) applies to health care professionals:

- 80           (i) described in Subsection (1);
- 81           (ii) who are under no legal duty to respond to the circumstances described in  
82 Subsection (2)(b);
- 83           (iii) who are acting within the scope of the health care professional's license, or within  
84 the scope of practice as modified under Subsection 58-1-307(4); and
- 85           (iv) who are acting in good faith without compensation or remuneration as defined in  
86 Subsection 58-13-3(2).

87           (b) A health care professional described in Subsection (2)(a) is not liable for any civil  
88 damages as a result of any acts or omissions by the health care professional in rendering care as  
89 a result of:

- 90           (i) implementation of measures to control the causes of epidemic and communicable

91 diseases and other conditions significantly affecting the public health or necessary to protect  
92 the public health as set out in Title 26A, Chapter 1, Local Health Departments;

93 (ii) investigating and controlling suspected bioterrorism and disease as set out in Title  
94 26, Chapter 23b, Detection of Public Health Emergencies Act; and

95 (iii) responding to a national, state, or local emergency, a public health emergency as  
96 defined in Section 26-23b-102, or a declaration by the President of the United States or other  
97 federal official requesting public health-related activities.

98 (3) The immunity in Subsection (2) is in addition to any immunity or protection in state  
99 or federal law that may apply.

100 Section 2. Section **58-13-3** is amended to read:

101 **58-13-3. Qualified immunity -- Health professionals -- Charity care.**

102 (1) (a) (i) The Legislature finds many residents of this state do not receive medical care  
103 and preventive health care because they lack health insurance or because of financial  
104 difficulties or cost.

105 (ii) The Legislature also finds that many physicians, charity health care facilities, and  
106 other health care professionals in this state would be willing to volunteer medical and allied  
107 services without compensation if they were not subject to the high exposure of liability  
108 connected with providing these services.

109 (b) The Legislature therefore declares that its intention in enacting this section is to  
110 encourage the provision of uncompensated volunteer charity health care in exchange for a  
111 limitation on liability for the health care facilities and health care professionals who provide  
112 those volunteer services.

113 (2) As used in this section:

114 (a) "Health care facility" means any clinic or hospital, church, or organization whose  
115 primary purpose is to sponsor, promote, or organize uncompensated health care services for  
116 people unable to pay for health care services.

117 (b) "Health care professional" means individuals licensed or certified under Title 58,  
118 Occupations and Professions, as physicians and surgeons, osteopaths, podiatrists, optometrists,  
119 chiropractors, dentists, dental hygienists, registered nurses, certified nurse midwives, [~~and~~]  
120 other nurses licensed under Section 58-31b-301[-], and certified Direct-entry midwives.

121 (c) "Remuneration or compensation":

122 (i) (A) means direct or indirect receipt of any payment by the physician and surgeon,  
123 health care facility, other health care professional, or organization, on behalf of the patient,  
124 including payment or reimbursement under medicare or medicaid, or under the state program  
125 for the medically indigent on behalf of the patient; and

126 (B) compensation, salary, or reimbursement to the health care professional from any  
127 source for the health care professional's services or time in volunteering to provide  
128 uncompensated health care; and

129 (ii) does not mean any grant or donation to the health care facility used to offset direct  
130 costs associated with providing the uncompensated health care such as medical supplies or  
131 drugs.

132 (3) A health care professional who provides health care treatment at or on behalf of a  
133 health care facility is not liable in a medical malpractice action if:

134 (a) the treatment was within the scope of the health care professional's license under  
135 this title;

136 (b) neither the health care professional nor the health care facility received  
137 compensation or remuneration for the treatment;

138 (c) the acts or omissions of the health care professional were not grossly negligent or  
139 willful and wanton; and

140 (d) prior to rendering services, the health care professional disclosed in writing to the  
141 patient, or if a minor, to the patient's parent or legal guardian, that the health care professional  
142 is providing the services without receiving remuneration or compensation and that in exchange  
143 for receiving uncompensated health care, the patient consents to waive any right to sue for  
144 professional negligence except for acts or omissions which are grossly negligent or are willful  
145 and wanton.

146 (4) A health care facility which sponsors, promotes, or organizes the uncompensated  
147 care is not liable in a medical malpractice action for acts and omissions if:

148 (a) the health care facility meets the requirements in Subsection (3)(b);

149 (b) the acts and omissions of the health care facility were not grossly negligent or  
150 willful and wanton; and

151 (c) the health care facility has posted, in a conspicuous place, a notice that in  
152 accordance with this section the health care facility is not liable for any civil damages for acts

153 or omissions except for those acts or omissions that are grossly negligent or are willful and  
154 wanton.

155 (5) Immunity from liability under this section does not extend to the use of general  
156 anesthesia or care that requires an overnight stay in a general acute or specialty hospital  
157 licensed under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act.

158 Section 3. Section 58-77-101 is enacted to read:

159 **CHAPTER 77. MIDWIFE CERTIFICATION ACT**

160 **Part 1. General Provisions**

161 **58-77-101. Title.**

162 This chapter is known as the "Midwife Certification Act."

163 Section 4. Section 58-77-102 is enacted to read:

164 **58-77-102. Definitions.**

165 In addition to the definitions in Section 58-1-102, as used in this chapter:

166 (1) "Board" means the Certified Direct-entry Midwife Board created in Section  
167 58-77-201.

168 (2) "Certified Direct-entry midwife" means a person certified under this chapter.

169 (3) "Client" means a woman under the care of a midwife and her fetus or newborn.

170 (4) "Midwife" means an individual who is engaging in the practice of midwifery.

171 (5) "Physician" means an individual licensed as a physician and surgeon, osteopathic  
172 physician, or naturopathic physician.

173 (6) "Practice of midwifery" means practice that is in accordance with national  
174 professional midwifery standards and that is based upon the acquisition of clinical skills  
175 necessary for the care of essentially normal pregnant women and newborns, including  
176 antepartum, intrapartum, postpartum, newborn, and limited interconceptual care and includes:

177 (a) obtaining an informed consent to provide services;

178 (b) obtaining a health history including a physical examination;

179 (c) developing a plan of care for a client;

180 (d) evaluating the results of client care;

181 (e) consulting and collaborating with and referring and transferring care to licensed  
182 health care professionals as is appropriate regarding the care of a client;

183 (f) obtaining medications, as specified in this Subsection (6)(f) or by rule, to administer

184 to clients, including:  
185 (i) prescription vitamins;  
186 (ii) Rho D immunoglobulin;  
187 (iii) CDC- or ACOG-recommended agents for Group B strep prophylaxis;  
188 (iv) sterile water;  
189 (v) IV fluids, excluding blood products;  
190 (vi) oxytocin (Pitocin) or methlergonvine maleate (Methergine) for use postpartum  
191 only;  
192 (vii) oxygen;  
193 (viii) local anesthetics for suturing an episiotomy or natural lacerations;  
194 (ix) vitamin K to prevent hemorrhagic disease of the newborn;  
195 (x) eye prophylaxis to prevent ophthalmia neonatorum as required by law; and  
196 (xi) other medications that are not controlled substances as defined in Section 58-37-2  
197 and which are approved by the division in collaboration with the Certified Direct-entry  
198 Midwife Formulary Committee;  
199 (g) obtaining food, food extracts, dietary supplements as defined by the Federal Food,  
200 Drug, and Cosmetic Act, homeopathic remedies, plant substances that are not designated as  
201 prescription drugs or controlled substances, and over-the-counter medications to administer to  
202 clients;  
203 (h) obtaining and using appropriate equipment and devices such as Doppler, fetal  
204 monitor, blood pressure cuff, phlebotomy supplies, instruments, and sutures;  
205 (i) obtaining appropriate screening and testing, including laboratory tests, urinalysis,  
206 and ultrasound;  
207 (j) managing the antepartum period;  
208 (k) managing the intrapartum period including:  
209 (i) monitoring and evaluating the condition of mother and fetus;  
210 (ii) performing emergency episiotomy; and  
211 (iii) delivering in any out-of-hospital setting;  
212 (l) managing the postpartum period including:  
213 (i) suturing of episiotomy or first and second degree natural perineal and labial  
214 lacerations, including the administration of a local anesthetic; and

215 (ii) managing hemorrhage, including the administration of Pitocin, Methergine, or IV  
216 fluids;

217 (m) managing the newborn period including:

218 (i) providing care for the newborn, including performing a normal newborn  
219 examination; and

220 (ii) resuscitating a newborn;

221 (n) providing the following limited interconceptual services:

222 (i) breastfeeding support and counseling;

223 (ii) family planning, limited to natural family planning, cervical caps and diaphragms;

224 and

225 (iii) pap smears, where all abnormal results are to be referred to a physician; and

226 (o) executing the orders of a licensed health care professional, only within the

227 education, knowledge, and skill of the midwife. **¶ THE PRACTICE OF MIDWIFERY IS NOT**

227a **CONSIDERED THE PRACTICE OF MEDICINE. ¶**

228 (7) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-77-501.

229 (8) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-77-502 and as  
230 may be further defined by rule.

231 Section 5. Section **58-77-201** is enacted to read:

232 **Part 2. Board**

233 **58-77-201. Board.**

234 (1) There is created the Certified Direct-entry Midwife Board consisting of four  
235 certified Direct-entry midwives and one member of the general public.

236 (2) The board shall be appointed and serve in accordance with Section 58-1-201.

237 (3) (a) The duties and responsibilities of the board shall be in accordance with Sections  
238 58-1-202 and 58-1-203.

239 (b) The board shall designate one of its members on a permanent or rotating basis to:

240 (i) assist the division in reviewing complaints concerning the unlawful or  
241 unprofessional conduct of a certified Direct-entry midwife; and

242 (ii) advise the division in its investigation of these complaints.

243 (4) A board member who has, under Subsection (3), reviewed a complaint or advised  
244 in its investigation may be disqualified from participating with the board when the board serves  
245 as a presiding officer in an adjudicative proceeding concerning the complaint.



246 (5) Faculty, board members, and other staff of Direct-entry midwifery learning  
247 institutions may serve on the board.

248 Section 6. Section **58-77-202** is enacted to read:

249 **58-77-202. Certified Direct-entry Midwife Formulary Committee -- Adoption of**  
250 **certified Direct-entry midwife formulary.**

251 (1) The division shall establish a Certified Direct-entry Midwife Formulary Committee  
252 under Subsection 58-1-203(1)(f) to make recommendations to the board and the division  
253 regarding the certified Direct-entry midwife formulary, including recommendations on which  
254 additional prescription drugs and devices are appropriate for the scope of practice of certified  
255 Direct-entry midwives and guidelines for their use.

256 (2) The committee shall consist of five members as follows:

257 (a) two certified Direct-entry midwives;

258 (b) one licensed physician who has recent, within five years, professional experience  
259 consulting for and collaborating with Direct-entry midwives;

260 (c) one certified nurse midwife who has recent, within five years, professional  
261 experience consulting for and collaborating with Direct-entry midwives; and

262 (d) one licensed pharmacist.

263 (3) The committee members shall:

264 (a) be appointed by the director of the division; and

265 (b) serve without compensation, travel costs, or per diem for their services.

266 (4) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
267 division shall adopt by rule a certified Direct-entry midwife formulary which includes:

268 (a) those additional prescription drugs or devices which may be obtained and  
269 administered by certified Direct-entry midwives as defined in Subsection 58-77-102(6)(f)(xi);

270 and

271 (b) standards, conditions, and guidelines for use of the prescription drugs or devices  
272 included in the formulary.

273 Section 7. Section **58-77-301** is enacted to read:

274 **Part 3. Certification**

275 **58-77-301. Certification classification.**

276 The division shall issue to a person who qualifies under this chapter a certification as a

277 certified Direct-entry midwife.

278 Section 8. Section **58-77-302** is enacted to read:

279 **58-77-302. Qualifications for certification.**

280 Each applicant for certification as a certified Direct-entry midwife shall:

281 (1) submit an application in a form prescribed by the division;

282 (2) pay a fee as determined by the department under Section 63-38-3.2;

283 (3) be of good moral character;

284 (4) hold a Certified Professional Midwife certificate in good standing with the North

285 American Registry of Midwives or equivalent certification approved by the division in

286 collaboration with the board;

287 (5) hold current adult and infant CPR and newborn resuscitation certifications through

288 an organization approved by the division in collaboration with the board; and

289 (6) provide documentation of successful completion of an approved pharmacology  
290 course as defined by division rule.

291 Section 9. Section **58-77-303** is enacted to read:

292 **58-77-303. Term of certification -- Expiration -- Renewal.**

293 (1) (a) The division shall issue each certification under this chapter in accordance with  
294 a two-year renewal cycle established by rule.

295 (b) The division may by rule extend or shorten a renewal period by as much as one year  
296 to stagger the renewal cycles it administers.

297 (2) Each certification automatically expires on the expiration date shown on the  
298 certification unless the individual renews it in accordance with Section 58-1-308.

299 (3) At the time of renewal, the certified Direct-entry midwife shall be in current  
300 compliance with the requirements of Section 58-77-302.

301 Section 10. Section **58-77-304** is enacted to read:

302 **58-77-304. Parents' rights.**

303 Nothing in this chapter abridges, limits, or changes in any way the right of parents to  
304 deliver their baby where, when, how, and with whom they choose, regardless of certification  
305 under this chapter.

306 Section 11. Section **58-77-401** is enacted to read:

307 **Part 4. Certification Denial and Discipline**

308 **58-77-401. Grounds for denial of certification -- Disciplinary proceedings.**

309 Grounds for refusing to issue a certification to an applicant, for refusing to renew the  
 310 certification, for revoking, suspending, restricting, or placing on probation the certification, for  
 311 issuing a public or private reprimand, and for issuing a cease and desist order shall be in  
 312 accordance with Section 58-1-401.

313 Section 12. Section **58-77-501** is enacted to read:

314 **Part 5. Unlawful and Unprofessional Conduct -- Penalties**315 **58-77-501. Unlawful conduct.**

316 **Ĥ (1) ĥ** In addition to the definition in Subsection 58-1-501(1), "unlawful conduct" includes:

317 **Ĥ [~~(1)~~] (a) ĥ** representing or holding oneself out as a certified Direct-entry midwife when not  
 318 certified under this chapter; and

319 **Ĥ [~~(2)~~] (b) ĥ** using prescription medications, except oxygen, while engaged in the practice of  
 320 midwifery when not certified under this chapter.

320a **Ĥ (2) EXCEPT AS PROVIDED IN SUBSECTIONS (1)(A) AND (B), IT IS LAWFUL TO PRACTICE**  
 320b **MIDWIFERY IN THIS STATE WITHOUT BEING CERTIFIED UNDER THIS CHAPTER. ĥ**

321 Section 13. Section **58-77-502** is enacted to read:

322 **58-77-502. Unprofessional conduct.**

323 In addition to the definition in Subsection 58-1-501(2), "unprofessional conduct"  
 324 includes:

325 (1) engaging in any act or practice for which the certified Direct-entry midwife is not  
 326 competent;

327 (2) failing to obtain informed consent as described in Subsection 58-77-601(1);

328 (3) disregarding a client's dignity or right to privacy as to her person, condition,  
 329 possessions, or medical record;

330 (4) failing to file or record any medical report as required by law, impeding, or  
 331 obstructing the filing or recording of such a report, or inducing another to fail to file or record  
 332 such a report;

333 (5) breaching a statutory, common law, regulatory, or ethical requirement of  
 334 confidentiality with respect to a person who is a client, unless ordered by the court;

335 (6) inappropriately delegating midwifery duties;

336 (7) using advertising or an identification statement that is false, misleading, or  
 337 deceptive;

338 (8) using in combination with the term "midwife" the term "nurse" or another title,

339 initial, or designation that falsely implies that the midwife is licensed as a certified nurse  
 340 midwife, registered nurse, or licensed practical nurse; and

341 (9) submitting a birth certificate known by the person to be false or fraudulent.

342 Section 14. Section **58-77-503** is enacted to read:

343 **58-77-503. Penalty for unlawful conduct.**

344 A person who violates the unlawful conduct provisions defined in this chapter is guilty  
 345 of a class A misdemeanor.

346 Section 15. Section **58-77-601** is enacted to read:

347 **Part 6. Standards of Practice**

348 **58-77-601. Standards of practice.**

349 (1) (a) Prior to providing any services, a certified Direct-entry midwife must obtain ~~it~~ **[am]** **A**

349a **WRITTEN ~~it~~**

350 informed consent from a client.

351 (b) The consent must include:

352 (i) the name and certificate number of the midwife;

353 (ii) the client's name, address, telephone number, and primary care provider, if the  
 354 client has one; ~~it~~ **[and]**

354a **(iii) THE FACT, IF TRUE, THAT THE CERTIFIED DIRECT-ENTRY MIDWIFE IS**

354b **NOT A CERTIFIED NURSE MIDWIFE OR A PHYSICIAN; ~~it~~**

355 **~~it~~ **[(iii)] (iv) ~~it~~** all sections required by the North American Registry of Midwives in its**  
 355a informed

356 consent guidelines ~~it~~ **[:]** ;

356a **(v) WHETHER THE CERTIFIED DIRECT-ENTRY MIDWIFE IS COVERED BY A PROFESSIONAL**  
 356b **LIABILITY INSURANCE POLICY; AND**

356c **(vi) THE FACT THAT THE CLIENT'S DECISION NOT TO USE A PHYSICIAN OR A CERTIFIED**  
 356d **NURSE MIDWIFE MAY BE TAKEN INTO ACCOUNT IN A MALPRACTICE ACTION. ~~it~~**

357 (2) (a) The certified Direct-entry midwife must recommend to the client that she be  
 358 evaluated by a physician or certified nurse midwife during the first trimester.

359 (b) If the client refuses, the certified Direct-entry midwife must document the refusal  
 360 and have the client sign another informed consent indicating the refusal to be evaluated by a  
 361 physician or certified nurse midwife.

362 (3) A certified Direct-entry midwife shall appropriately consult with, collaborate with,  
 363 refer to, or recommend that a client transfer care to a licensed health care professional when the  
 364 circumstances require that action in accordance with standards established by division rule.

365 (4) If after a client has been informed that she has or may have a high-risk condition  
 366 indicating the need for medical consultation, collaboration, referral, or transfer and the client  
 367 chooses to decline, then the certified Direct-entry midwife shall:

368 (a) continue to provide care for the client if the client signs a waiver of medical  
 369 consultation, collaboration, referral, or transfer; or

- 370 (b) terminate care in accordance with procedures established by division rule.  
 371 (5) If transfer of care results from an emergency situation, the certified Direct-entry  
 372 midwife shall initiate transfer by:  
 373 (a) calling 911 and reporting the need for immediate transfer;  
 374 (b) immediately transporting the client by private vehicle to the receiving provider; or  
 375 (c) contacting the physician to whom the client will be transferred and following that  
 376 physician's orders.

376a **Ĥ (6) THIS CHAPTER DOES NOT MANDATE HEALTH INSURANCE COVERAGE FOR MIDWIFE**  
 376b **SERVICES. ĥ**

377 Section 16. Section **58-77-602** is enacted to read:

378 **58-77-602. Immunity and liability.**

379 (1) If a midwife seeks to consult with, refer, or transfer a client to a physician, certified  
 380 nurse midwife, or facility, the responsibility of the provider or facility for the client does not  
 381 begin until the client is physically within the care of the provider or facility.

382 (2) A physician or certified nurse midwife who examines a client in accordance with  
 383 Subsection 58-77-601(2) is only liable for the actual examination and cannot be held  
 384 accountable for the client's decision to pursue an out-of-hospital birth or the services of a  
 385 midwife.

386 (3) (a) A physician or certified nurse midwife may, upon receiving a briefing Ĥ [data] ĥ  
 386a from  
 387 a midwife, issue a medical order for the midwife's client, without that client being an explicit  
 388 patient of the physician or certified nurse midwife.

389 (b) Ĥ [The responsibility and liability for the briefing and the proper execution of the  
 390 medical order is that of the midwife.] A PROVIDER-PATIENT RELATIONSHIP MAY NOT ARISE FROM  
 390a A PHYSICIAN OR CERTIFIED NURSE MIDWIFE PROVIDING MEDICAL ADVICE OR ISSUING A  
 390b MEDICAL ORDER TO THE MIDWIFE FOR THE MIDWIFE'S CLIENT.

390c **(c) REGARDLESS OF THE ADVICE OR ORDER GIVEN, THE RESPONSIBILITY AND LIABILITY**  
 390d **FOR CARING FOR THE CLIENT RESTS WITH THE MIDWIFE. ĥ**

391 Ĥ [(c)] (d) ĥ The provider giving the order is responsible and liable only for the  
 391a appropriateness  
 392 of the order given the data received.

393 Ĥ [(d)] (e) ĥ The issuing of an order for a midwife's client does not constitute a delegation of  
 394 duties from the other provider to the midwife.

395 Section 17. Section **58-77-603** is enacted to read:

396 **58-77-603. Prohibited practices.**

397 A midwife may not:

398 (1) administer a prescription drug to a client, other than those specified in Subsection  
 399 58-77-102(6);

400 (2) use forceps or a vacuum extractor, or effect any type of surgical delivery except for

401 the cutting of an emergency episiotomy;

402 (3) administer any type of epidural, spinal, or caudal anesthetic, or any type of narcotic  
403 analgesia; or

404 (4) induce abortion.

405 Section 18. Section **78-14-3** is amended to read:

406 **78-14-3. Definitions.**

407 As used in this chapter:

408 (1) "Audiologist" means a person licensed to practice audiology under Title 58,  
409 Chapter 41, Speech-language Pathology and Audiology Licensing Act.

410 (2) "Certified Direct-entry midwife" means a person certified under the Midwife  
411 Certification Act to practice midwifery as defined in Section 58-77-102.

412 [~~2~~] (3) "Certified social worker" means a person licensed to practice as a certified  
413 social worker under Section [58-60-305] 58-60-205.

414 [~~3~~] (4) "Chiropractic physician" means a person licensed to practice chiropractic  
415 under Title 58, Chapter 73, Chiropractic Physician Practice Act.

416 [~~4~~] (5) "Clinical social worker" means a person licensed to practice as a clinical  
417 social worker under Section [58-60-305] 58-60-205.

418 [~~5~~] (6) "Commissioner" means the commissioner of insurance as provided in Section  
419 31A-2-102.

420 [~~6~~] (7) "Dental hygienist" means a person licensed to practice dental hygiene as  
421 defined in Section 58-69-102.

422 [~~7~~] (8) "Dentist" means a person licensed to practice dentistry as defined in Section  
423 58-69-102.

424 [~~8~~] (9) "Division" means the Division of Occupational and Professional Licensing  
425 created in Section 58-1-103.

426 [~~9~~] (10) "Future damages" includes damages for future medical treatment, care or  
427 custody, loss of future earnings, loss of bodily function, or future pain and suffering of the  
428 judgment creditor.

429 [~~10~~] (11) "Health care" means any act or treatment performed or furnished, or which  
430 should have been performed or furnished, by any health care provider for, to, or on behalf of a  
431 patient during the patient's medical care, treatment, or confinement.

432           ~~[(11)]~~ (12) "Health care facility" means general acute hospitals, specialty hospitals,  
433 home health agencies, hospices, nursing care facilities, assisted living facilities, birthing  
434 centers, ambulatory surgical facilities, small health care facilities, health care facilities owned  
435 or operated by health maintenance organizations, and end stage renal disease facilities.

436           ~~[(12)]~~ (13) "Health care provider" includes any person, partnership, association,  
437 corporation, or other facility or institution who causes to be rendered or who renders health  
438 care or professional services as a hospital, health care facility, physician, registered nurse,  
439 licensed practical nurse, nurse midwife, certified Direct-entry midwife, dentist, dental  
440 hygienist, optometrist, clinical laboratory technologist, pharmacist, physical therapist,  
441 podiatric physician, psychologist, chiropractic physician, naturopathic physician, osteopathic  
442 physician, osteopathic physician and surgeon, audiologist, speech-language pathologist, clinical  
443 social worker, certified social worker, social service worker, marriage and family counselor,  
444 practitioner of obstetrics, or others rendering similar care and services relating to or arising out  
445 of the health needs of persons or groups of persons and officers, employees, or agents of any of  
446 the above acting in the course and scope of their employment.

447           ~~[(13)]~~ (14) "Hospital" means a public or private institution licensed under Title 26,  
448 Chapter 21, Health Care Facility Licensing and Inspection Act.

449           ~~[(14)]~~ (15) "Licensed practical nurse" means a person licensed to practice as a licensed  
450 practical nurse as provided in Section 58-31b-301.

451           ~~[(15)]~~ (16) "Malpractice action against a health care provider" means any action against  
452 a health care provider, whether in contract, tort, breach of warranty, wrongful death, or  
453 otherwise, based upon alleged personal injuries relating to or arising out of health care rendered  
454 or which should have been rendered by the health care provider.

455           ~~[(16)]~~ (17) "Marriage and family therapist" means a person licensed to practice as a  
456 marriage therapist or family therapist under Section 58-60-405 and Section 58-60-305.

457           ~~[(17)]~~ (18) "Naturopathic physician" means a person licensed to practice naturopathy  
458 as defined in Section 58-71-102.

459           ~~[(18)]~~ (19) "Nurse[=] midwife" means a person licensed to engage in practice as a nurse  
460 midwife under Section 58-44a-301.

461           ~~[(19)]~~ (20) "Optometrist" means a person licensed to practice optometry under Title 58,  
462 Chapter 16a, Utah Optometry Practice Act.

463            [~~(20)~~] (21) "Osteopathic physician" means a person licensed to practice osteopathy  
464 under Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

465            [~~(21)~~] (22) "Patient" means a person who is under the care of a health care provider,  
466 under a contract, express or implied.

467            [~~(22)~~] (23) "Pharmacist" means a person licensed to practice pharmacy as provided in  
468 Section 58-17a-301.

469            [~~(23)~~] (24) "Physical therapist" means a person licensed to practice physical therapy  
470 under Title 58, Chapter 24a, Physical Therapist Practice Act.

471            [~~(24)~~] (25) "Physician" means a person licensed to practice medicine and surgery under  
472 Title 58, Chapter 67, Utah Medical Practice Act.

473            [~~(25)~~] (26) "Podiatric physician" means a person licensed to practice podiatry under  
474 Title 58, Chapter 5a, Podiatric Physician Licensing Act.

475            [~~(26)~~] (27) "Practitioner of obstetrics" means a person licensed to practice as a  
476 physician in this state under Title 58, Chapter 67, Utah Medical Practice Act, or under Title 58,  
477 Chapter 68, Utah Osteopathic Medical Practice Act.

478            [~~(27)~~] (28) "Psychologist" means a person licensed under Title 58, Chapter 61,  
479 Psychologist Licensing Act, to practice psychology as defined in Section 58-61-102.

480            [~~(28)~~] (29) "Registered nurse" means a person licensed to practice professional nursing  
481 as provided in Section 58-31b-301.

482            [~~(29)~~] (30) "Representative" means the spouse, parent, guardian, trustee,  
483 attorney-in-fact, or other legal agent of the patient.

484            [~~(30)~~] (31) "Social service worker" means a person licensed to practice as a social  
485 service worker under Section 58-60-205.

486            [~~(31)~~] (32) "Speech-language pathologist" means a person licensed to practice  
487 speech-language pathology under Title 58, Chapter 41, Speech-language Pathology and  
488 Audiology Licensing Act.

489            [~~(32)~~] (33) "Tort" means any legal wrong, breach of duty, or negligent or unlawful act  
490 or omission proximately causing injury or damage to another.



**Legislative Review Note**

as of 1-13-04 9:28 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

**State Impact**

Board meeting will cost \$1,200 and the program will increase revenues to the Commerce Service Fund by \$1,500.

	<u>FY 2005</u> <u>Approp.</u>	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2005</u> <u>Revenue</u>	<u>FY 2006</u> <u>Revenue</u>
Commerce Service Fund	\$1,200	\$1,200	\$1,500	\$1,500
<b>TOTAL</b>	<b>\$1,200</b>	<b>\$1,200</b>	<b>\$1,500</b>	<b>\$1,500</b>

---

**Individual and Business Impact**

Business and individual impacts are expected to be small.

---